

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY



CONOCO PHILLIPS ALASKA)
NATURAL GAS CORPORATION)
AND)
MARATHON OIL COMPANY.)

FE DOCKET NO. 07-02-LNG

**ORDER GRANTING MOTIONS TO INTERVENE
AND REQUESTS TO FILE REPLY COMMENTS
AND DEFERRING ACTION ON REQUESTS
FOR OTHER ADDITIONAL PROCEDURES**

JUNE 5, 2007

PROCEDURAL HISTORY

On January 10, 2007, Conoco Phillips Alaska Natural Gas Corporation (CPANGC) and Marathon Oil Company (Marathon) (jointly, applicants) filed an application requesting that the Office of Fossil Energy (FE) of the Department of Energy (DOE) grant them authority to export liquefied natural gas (LNG) to Japan and/or one or more countries on either side of the Pacific Rim over a two year period commencing April 1, 2009 and terminating March 31, 2011. On March 8, 2007, FE published a notice of the application in the Federal Register inviting protests, motions to intervene, notices of intervention, and written comments. *See*, 72 FR 10507.

Pursuant to 10 C.F.R. 590.302 and 590.303, on April 9, 2007, FE received timely filed motions to intervene, comments, and/or protests of the application from Agrium U.S., Inc. (Agrium); Chevron U.S.A., Inc. and Union Oil Company of California (jointly, Chevron); Chugach Electric Association, Inc. (Chugach); Enstar Natural Gas Company (Enstar); the State of Alaska (State); and Tesoro Corporation and its subsidiary, Tesoro Alaska Company (jointly, Tesoro). In addition, also on April 9, 2007, the Alaska Oil and Gas Conservation Commission (AOGCC) filed a notice of intervention pursuant to 10 C.F.R. § 590.303(a). On or before April 9, 2007, non-interveners also filed 76 letters in support of the application and one letter opposed to the application. Additionally, the Export Council of Alaska, the Anchorage Chamber of Commerce, and the Kenai Peninsula Borough submitted resolutions in support of the application.

Of the numerous pleadings received by FE by April 9, 2007, two included requests for additional procedures. The State of Alaska (the State) filed a motion asking for trial type procedures with discovery and permission to submit additional reply comments in response to any answer that the applicants may file. Tesoro filed a motion requesting an opportunity to file reply comments; a preliminary conference of the parties that could include settlement discussions, a stipulation of issues and/or additional procedures; an opportunity to conduct discovery; a public hearing in Anchorage, Alaska to address local public interest issues; an opportunity to make an oral presentation; and an opportunity to hold evidentiary trial-type proceedings.

On April 20, 2007, the applicants jointly filed a motion seeking additional time until May 8, 2007 in which to file their answer to the various motions to intervene, comments, and protests. On April 24, 2007, FE issued an Order granting the applicants' motion.

On May 8, 2007, the applicants filed their Answer to the April 9 pleadings. In their Answer, the applicants, *inter alia*, opposed the intervention of Agrium, Chevron, and Tesoro. Applicants also contested the claims of commenters and protestors that the authority sought either should be denied or, if granted, should be substantially conditioned.

FE issued an Order on May 9, 2007 in which it deferred ruling on the pending motions to intervene, comments, protests, and applicants' answer in order to afford itself further opportunity to review all of the pleadings before it.

SUMMARY OF ORDER

For the reasons set forth below, we will grant all of the motions to intervene that were timely filed in this proceeding. We also will grant the requests of the State and Tesoro for an opportunity for interveners to file replies to the applicants' answer. In order to receive consideration, the interveners' reply comments must be filed by June 19, 2007. FE currently sees no reason for a trial-type hearing or the other additional procedures requested by the State and Tesoro, but we will re-consider those requests after the submission of interveners' reply comments.

INTERVENTIONS

Introduction. Under the Department's regulations, 10 CFR § 590.303(e), all unchallenged motions to intervene are deemed granted unless the Assistant Secretary denies the motions in whole or in part or otherwise limits the interventions prior to the expiration of a 15 day period following the filing of the motions to intervene. FE's April 24, 2007 order granted a four week extension of the due date for filing an answer to the motions to intervene. The April 24 order thus effectively deferred action on all of the motions to intervene.

The applicants have not opposed the motions to intervene filed by Chugach, Enstar, and the State. Accordingly, we find that those unopposed motions should be granted. We also find that the AOGCC's notice of intervention gives it full intervener status as a matter of right.

Motions to Intervene of Agrium, Chevron, and Tesoro. As indicated *supra*, the applicants have challenged three motions to intervene. Those motions were filed by Agrium, Chevron, and Tesoro. Respectively, these three movants made the following representations in their April 9 filings in support of their intervention in this proceeding:

- **Agrium.** Agrium owns a fertilizer manufacturing plant on the Kenai Peninsula adjacent to the applicants' LNG facility. Because Agrium uses natural gas as a feedstock in its operations, it requires a substantial and consistent flow of Cook Inlet gas in order to keep its Kenai plant open. Agrium maintains that it is one of the major Cook Inlet domestic gas consumers and the major industrial gas user in the area. Agrium also maintains that it has had to shut down its operations on several occasions because of a local gas supply shortage. The implication of Agrium's argument is that a grant of the export authority sought by applicants could exacerbate the alleged local supply shortage. These circumstances, according to Agrium, give it a "direct, unique, and substantial interest" in this proceeding, thereby warranting its intervention.
- **Chevron.** Chevron is engaged in the exploration for and production and marketing of Cook Inlet gas. Chevron exclusively relies on Cook Inlet gas to meet its contractual obligations to supply gas to its customers, including Enstar, the natural gas utility serving Anchorage, AK; Chugach, the electric utility

serving portions of Southcentral Alaska; and other industrial customers in Southcentral Alaska. Chevron is a participant with the two applicants in three jointly-owned fields on the Kenai Peninsula. CPANGC, Chevron, and Marathon each operate one of these three fields. The reservoirs underlying these fields are the source of the gas sold by Chevron to its customers and will be the source, according to Chevron, of at least some of the gas to be exported if the application is granted. Because the applicants operate two of the three fields, the applicants' decisions regarding production rates from these fields in respect to the proposed export could substantially affect Chevron's ability to meet its delivery obligations to its customers. Chevron notes that the applicants themselves buttress the concern over the effect over the subject gas fields when, in the application, they claim that a shutdown of the Kenai LNG plant could cause a shut-in of the flowing gas supplies that otherwise would be produced from the Cook Inlet reservoirs and could result in permanent loss of natural gas reserves and deliverability. While Chevron indicates that it is still assessing the full implications of the application before it decides whether to oppose or support the application, Chevron maintains that the above factors give it a substantial interest in the potential export of LNG, thereby supporting its right to intervene.

- **Tesoro.** Tesoro is the owner and operator of an oil refinery on the Kenai Peninsula. Tesoro's Kenai Refinery is the sole manufacturer of ultra-low sulfur diesel fuel within the State of Alaska and a major source of supply for the State's gasoline and jet fuel demand. Tesoro employs over 600 people at its Kenai Refinery and its operation is a significant contributor to the local economy. Tesoro holds a supply contract with one of the applicants, Marathon. Tesoro uses the gas supplied by Marathon both as a feedstock and as a fuel to operate the Kenai Refinery. Marathon curtailed deliveries to Tesoro in November and December 2006. These were the first curtailments that Tesoro had faced under its contract with Marathon and they occurred notwithstanding the fact that Agrium had shut down its operations and, therefore, was not consuming significant volumes of gas during the same time period. The curtailments, which resulted in substantial additional costs to Tesoro, are allegedly a clear indication that Marathon does not presently have adequate supplies of gas to meet local need. Tesoro alleges that, contrary to the public interest, the export authority sought herein will only exacerbate the local gas supply shortage. Tesoro accordingly seeks to intervene in order to protect its interest in assuring an adequate local supply of natural gas.

Applicants' Answer. In response to the motions of Agrium, Chevron, and Tesoro to intervene, the applicants essentially contend that the motions should be denied because these three movants only have demonstrated a private economic interest in the outcome of this proceeding. The applicants appear to be arguing that, in order to sustain an intervention in an LNG export proceeding under section 3 of the Natural Gas Act, 15 USC 717b, the movant must demonstrate that it is defending the public interest. More specifically, with respect to Agrium and Tesoro, the applicants contend also that these two movants should not be granted intervention because a grant of the authority sought

will have no impact on the ability of any supplier to serve them or on their ability to privately contract with any supplier. Such private commercial interests, according to the applicants, have no bearing on the public interest issues at stake in this proceeding. The applicants, in particular, reject Tesoro's claim that its intervention will help to protect the interests of all Alaskans. The applicants maintain that Tesoro has not shown why another intervenor herein, the State, is not better able to represent the public interest of Alaskans. With respect to Chevron's motion to intervene, the applicants argue that the concerns voiced by Chevron over its supply obligations are theoretical claims at best and that, in any event, those concerns are addressed in private dealings between Chevron and the applicants. The applicants also note that Chevron failed to take a position on the merits of the application and contend that this failure to take a position forecloses Chevron's right to intervene.

Discussion. Intervention, sometimes called "administrative standing", is a matter subject to the sound discretion of the agency charged with the responsibility for hearing and deciding a matter, as determined from the language of the statutes and regulations that establish the proceeding. *See, ECEE, Inc. v. FERC*, 645 F.2d 339, 349-50 (5th Cir. 1981).

In this proceeding, the statutory language guiding the determination of intervenor status is contained in Section 15(e) of the Natural Gas Act (15 U.S.C. § 717n(e)). Section 15(e) states that "[i]n any proceeding before it, the Commission^[1] in accordance with such rules or regulations as it may prescribe, may admit as a party any interested State, State commission, municipality or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest."

Clearly, the movants have demonstrated interests in the outcome of this proceeding which fall within the ambit of section 15(e). Agrium and Tesoro are consumers of the gas that is produced from the Cook Inlet. Chevron is a competitor as well as a business partner of the applicants. The proposed export of LNG clearly could affect the interests of all three movants and we find that all three movants should be permitted to intervene in this proceeding.

REPLY COMMENTS

The State and Tesoro have submitted requests for an opportunity to file comments in reply to the applicants' answer. We find that such an opportunity should be afforded to all intervenors. The reply comments, however, should be limited to a direct response to allegations or argument contained in the applicants' answer. Submissions which exceed the scope of allowed argument may not be considered. Reply comments are due by June 26, 2007 and will not be accepted after that date.

¹ Pursuant to the transfer of authorities in section 301(b) of the Department of Organization Act, Pub. L. 95-91, 91 Stat. 565 (1977), 42 USC § 7151(b), and to the delegation of authority to the Assistant Secretary for Fossil Energy in Redelegation Order 00-002.04C (Jan. 30, 2007), FE performs the statutory role formerly held by the Commission under the Natural Gas Act for purposes of reviewing and deciding section 3 import and export proceedings.

OTHER ADDITIONAL PROCEDURES

In addition to seeking the right to submit reply comments, the State and Tesoro have asked for other additional procedures, as described above. FE is not convinced that such additional procedures are warranted at this time. Accordingly, we will not presently grant the requests for such additional procedures but, consistent with our regulations, 10 C.F.R. 590.310, may order such procedures at a subsequent time if we determine that those procedures are necessary or helpful to clarify the issues before us.

PRINCIPAL FINDINGS

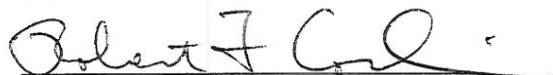
FE finds that all timely filed motions to intervene should be granted and interveners should be given an opportunity to file, by June 26, 2007, reply comments directly responding to the answer of the applicants. The requests for other additional procedures filed herein shall not be granted at this time but FE reserves the right to order other additional procedures at a subsequent time.

ORDER

For the reasons set forth above, it is ordered:

1. the motions to intervene filed by Agrium, Chevron, Chugach, Enstar, the State, and Tesoro are granted;
2. the interveners are permitted to submit reply comments no later than June 26, 2007, and such reply comments shall be limited to replies to matters raised in the applicants' answer; and
3. the requests by the State and Tesoro for other additional procedures are not granted at this time but FE reserves the right to order such additional procedures at a subsequent time.

Issued in Washington, D.C. on June 5, 2007.



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